

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.5508 OF 1982

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not ?
3. Whether their lordships wish to see the fair copy of the judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge?

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UNITED COMMERCIAL BANK EMPLOYEES ASSOCIATION & ANR  
VERSUS

UNITED COMMERCIAL BANK

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Appearance:

MR AM RAVAL for the Petitioner

MR MK VAKHARIA for Respondents No.1 & 2

None present for other Respondents

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Coram: S.K. Keshote,J

Date of decision:15/08/97

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C.A.V. JUDGMENT

#. Heard learned counsel for the parties.

#. This petition has been filed by the United Commercial

Bank Employees' Association, Gujarat State Unit, through its President and one Shri A.S.Khandwala, c/o. petitioner No.1-Union. So, this Special Civil Application is on behalf of the employees' union in the service matter.

#. The facts of the case in brief are that the petitioner-Union represents the interest of clerical staff of the respondent-Bank and the petitioner No.2 is a member of the petitioner No.1. Grievance has been made by petitioners in the Special Civil Application against the alleged illegal action of the respondent authorities in putting the respondents No.3 to 7 at the top of the seniority list of the clerical cadre, when they did not belong to this cadre at all. This cadre of respondents No.3 to 7 was stated to be in utter violation of agreement regarding policy and procedure concerning promotion and selection entered into by the respondent-Bank and the petitioner No.1-Association at all India level.

#. So the petitioners' Union is espousing the cause of the members in the service matter and what it contended was that the seniority assigned to the respondents No.3 to 7 in the clerical cadre is in utter violation of the agreement entered into by the management and the petitioner No.1. So it is a case where the petitioner-Union is alleging breach of agreement entered in between the employer and the employee. In such matters, the only remedy available to the Union is to raise industrial dispute rather than to approach this Court under Article 226 of the Constitution of India. The service conditions inclusive of seniority, promotion, etc. of the members of the petitioner-association are regulated under the settlement arrived at between the petitioner No.1 and the respondent-Bank, and if it stated that there is some violation of the agreement, then the only remedy available to the Union is to raise industrial dispute, which precisely has not been done in the present case.

#. The learned counsel for the petitioners has given out that in the present case, the Labour Court or the Tribunal may not have jurisdiction, but I fail to see any justification in this contention of the counsel for petitioners. The learned counsel for the petitioners is unable to cite any Award or any provision from the Industrial Disputes Act to establish that in such matters, the Labour Court or the Industrial Tribunal may not have jurisdiction. It has next been contended by learned counsel for the petitioners that this matter

pertains to the interpretation of agreement and as such appropriate remedy is to approach this Court. Again, I do not find any substance in this contention. The Labour Court or the Tribunal are equally competent to go into such questions. Lastly, the learned counsel for the petitioners contended that this writ petition pertains to the agreement which has been entered into at the all India level and as such, important issue has been involved. Even if agreement has been entered into at all India level, I fail to see how it takes away jurisdiction of the Labour Court or Industrial Tribunal to entertain and try the dispute which has been raised by the petitioners in this Special Civil Application, under the Industrial Disputes Act. Under Article 226 of the Constitution of India, in the service matters, it is settled law that the persons affected should come and Unions may not have any fundamental or legal right to approach this Court. If a Union espouses a cause, then normally it should have resorted to remedy under the Industrial Disputes Act. In the Special Civil Application, as stated earlier, the dispute pertains to giving seniority to respondents No.3 to 7 in the clerical cadre and this point could have been gone into by the Labour Court or Industrial Tribunal, as the case may be, to which reference of the dispute is made by the Government.

#. The grievance of the petitioners is that the respondents No.3 to 7 have been promoted to the officers cadre. Thereafter they have requested for reversion to the clerical cadre and that request has been accepted and they have been reverted to the clerical cadre. The contention of the petitioner is that the services of those respondents in the clerical cadre for seniority should have been counted only from the date of their reversion and their past services which they rendered in the officers cadre should not have been counted. However, as I am of the opinion that the matter has to be relegated to the Labour Court, I do not consider it appropriate to express any opinion on the merits of this contention. Such a dispute can certainly be gone into by the Labour Court and no exception could have been taken to the same by the petitioners by approaching this Court directly under Article 226 of the Constitution of India. There is yet another reason, in my opinion, which justifies this course to be adopted. This Special Civil Application has come up for admission before this Court on 27th April 1983. This Court has ordered:

"Rule.

All appointments to the post of Special Assistance will be subject to the result of this petition. Interim relief only to this extent. Ad-interim relief shall stand vacated.

Mr.Vakharia & Mr.Mehta waive service of rule on behalf of the respondents they represent."

So, substantially no interim relief has been granted in this case. This Court has permitted respondents No.1 and 2 to make appointments to the post of Special Assistants. However, these appointments were stated to be subject to the result of this petition.

#. This petition has been filed in the year 1982 and this aforesaid order has been made in the year 1983. So more than fourteen years have passed after passing of the aforesaid order. The petitioners have not brought on record of the Special Civil Application, the subsequent events and developments which would have taken place. In the service matters, it is not unknown that by passing of time many of the grievances for which the petitioners have come up before this Court, come to an end. I have observed in many cases while dealing with service matters that it is the duty of the petitioners to bring on record of the petition, the latest position and what now survives in the petition. By now the members of the petitioner-association may not have any grievance. Seniority is definitely one thing, but it is not the only thing for promotion. There may be possibility that the respondents No.3 to 7 would not have got further promotion and the members of the petitioner No.1 would have been given promotion in preference to respondents No.3 to 7. This long gap of fourteen years is taken place and the developments and events which have taken place during this period in the service matters have to be brought on record. However, in view of the aforesaid order, the promotion may have been made and now the only question remains is that whether any grievance survives of the members of the petitioner No.1.

#. In these facts and circumstances, interest of justice will be served in case this Special Civil Application is disposed of with directions that if any substantial grievance still survives in the matter, the petitioner No.1 is at liberty to file representation before the respondent No.1, within a period of one month from the date of receipt of certified copy of this order. In case such a representation is made by petitioner No.1, the respondent No.1 shall decide the same within a period of three months from the date of receipt thereof after

hearing representative of the petitioner No.1. In case the grievance made by the petitioner is not accepted, the respondent No.1 may pass a reasoned order and a copy of the same may be sent to the petitioner No.1. In case the petitioner No.1. is still not satisfied with it, then it is upon it to avail appropriate remedy available under the Industrial Disputes Act, 1947. The Special Civil Application and the Rule stand disposed of in aforesaid terms with no order as to costs.

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